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TO: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
Supervisor Yvonne Brathwaite Burke
Supervisor Don Knabe
Supervisor Michael D. Antonovich

FROM: J. Tyler McCauley *[Signature]*
Auditor-Controller

SUBJECT: **REVIEW OF COUNTY COMMISSION ON HIV HEALTH SERVICES
INDEPENDENCE AND CONFLICT OF INTEREST**

On August 20, 2002, your Board instructed my office, in conjunction with the Chief Administrative Office (CAO), County Counsel, Department of Health Services (DHS), and the County Commission on HIV Health Services (Commission) to investigate possible insufficient independence between the Commission and DHS' Office of AIDS Programs and Policy (OAPP). In addition, we were instructed to determine if statutory or perceived conflicts of interest exist.

Our review included examining federal AIDS funding laws, the County Code and external reports on the Commission and OAPP. We also discussed these issues with federal officials, Commission co-chairs, County Counsel, DHS management and other jurisdictions that have similar commissions/councils. Our review did not include evaluating statutory conflicts of interest. County Counsel is reviewing that issue, and will issue a separate opinion to your Board.

Review Summary

Our review indicates that there are three situations that raise issues regarding the need for greater independence between the Commission and OAPP, and a perceived conflict of interest based on the membership of the Commission. These situations are summarized below.

1. OAPP employees are voting members of the Commission

Two OAPP employees are voting members of the Commission, including the head of OAPP. These employees do not serve as chairs or co-chairs of the Commission. Our review indicates that having local health department HIV/AIDS unit (e.g., OAPP) employees serve as voting members of the planning councils is a common practice and appears to be allowed under the federal law requiring the planning councils. However, some federal Health Resources and Services Administration (HRSA) officials we contacted stated that, while HRSA does not have a formal policy, the officials believe that OAPP staff should not be voting members of the Commission.

Under federal law, the Commission has three required functions; establishing priorities for HIV/AIDS funds, verifying that the HIV/AIDS contracts processed through OAPP met the funding priorities and reviewing the administrative mechanism used to process HIV/AIDS funds. Because two of the Commission's major tasks relate to assessing the work of OAPP, we believe having OAPP staff serve as voting members of the Commission results in at least the appearance of bias or a lack of independence.

2. HIV Commission members have affiliations with County HIV/AIDS service providers

DHS indicated that approximately one-half of the HIV Commission members, who are not County employees, are affiliated with agencies that provide HIV/AIDS services under contract with the County (e.g., serve on an agency's board, is an employee or officer of an agency, etc.). The federal law requiring local HIV planning councils, such as the County HIV Commission, requires that the councils include healthcare and social service providers. We confirmed that having representatives from HIV/AIDS service providers on the councils is a common practice in other jurisdictions.

Federal regulations and the County Code prohibit the Commission from being directly involved in administering CARE Act funds, and Commission members are precluded from selecting entities to receive funds if they have a financial affiliation with the agency. The County Code also specifies that the Commission cannot be involved in selecting individual recipients of CARE Act funds. However, under the CARE Act, the Commission is required to set funding priorities among service categories (e.g., inpatient, outpatient, mental health, dental services, etc.), which can indirectly affect entities' funding. Therefore, allowing individuals who are affiliated with agencies that receive funding to participate in the priority setting process creates the appearance of bias or a conflict of interest.

3. HIV Commission does not have its own staff.

The HIV Commission does not have its own staff. Rather, OAPP staff provides support to the Commission. We confirmed that some other jurisdictions also staff their HIV planning councils with local health department HIV/AIDS unit employees. However, the HRSA officials we contacted indicated that they believe the councils should have their

own staff independent of the local health department HIV/AIDS unit to ensure that the council's planning process is independent of the contracting process managed by the local HIV/AIDS unit. In addition, since two of the Commission's mandated functions involve evaluating OAPP's contracting, we believe the Commission should have staff independent of OAPP. A task force established by the County Core Planning Partners also recommended that the Commission have its own staff, independent of OAPP.

Recommendations

Based on our review, we recommend that the Board take the following actions to eliminate the potential appearance of bias or a lack of independence between the Commission and OAPP:

1. Amend the County Code to provide that, if OAPP staff serve on the Commission, they are to serve as non-voting members, or that non-OAPP DHS staff be appointed as DHS' representatives on the Commission.
2. Evaluate whether the Commission membership can be changed with regard to members who have affiliations with providers, to reduce the appearance of conflict.
3. Provide the HIV Commission with staff independent of OAPP.

The details of our review are included in the attached report.

Review of Report

We discussed the results of our review with the CAO, DHS, and the co-chairs of the HIV Commission. The CAO, DHS and co-chairs indicated general agreement with our recommendations.

We thank DHS, CAO, County Counsel and the HIV Commission co-chairs for their assistance during our review. If you have any questions, please call me, or have your staff call DeWitt Roberts at (213) 974-0301.

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Attachment

c: David E. Janssen, CAO
Thomas L. Garthwaite, M.D., DHS
Lloyd W. Pellman, County Counsel
County Commission on HIV Health Services
Violet Varona-Lukens, Executive Officer
Public Information Office
Audit Committee

REVIEW OF COUNTY COMMISSION ON HIV HEALTH SERVICES INDEPENDENCE AND CONFLICT OF INTEREST

Background

The federal Ryan White Comprehensive AIDS Resource Emergency (CARE) Act provides funding to local governments for HIV/AIDS services. The CARE Act requires that local grant recipients (e.g., the County) establish HIV health services planning councils to determine funding priorities. The CARE Act specifically states that the councils shall include representatives of local public health agencies, and healthcare and social service providers. The CARE Act also indicates that the planning council may not be directly involved in the administration of a grant, and that members of the council may not participate in selecting entities to receive funds if they have a financial interest in an entity.

The County Commission on HIV Health Services (Commission) was established by the County Board of Supervisors under County Code Title 3, Chapter 3.29 as the County's HIV planning council. Under the Code, the Commission consists of 49 members appointed by the Board, including one nominated by each of the following: the Department of Health Services (DHS) Director of Public Health Programs and Services, the DHS Director of the Office of AIDS Programs and Policy (OAPP), and the Fiscal Agent for Title II CARE Act funds.

To prevent conflicts of interest, the federal law and County Code state that the Commission shall not be involved in administering grant funds or in selecting funding recipients. In addition, the County Code states that Commission members shall not be involved in selecting entities to receive funds if the member has a financial interest in, or is an employee or a member of a public or private entity seeking CARE Act funds.

Under the CARE Act, the Commission is responsible for establishing priorities for spending CARE Act funds, certifying that CARE act funds have been spent in accordance with Commission priorities and reviewing the mechanism used by the County to administer CARE Act funds. The Commission does not recommend individual funding recipients or review individual contracts.

OAPP Employee Commission Members

One area that may create the appearance of inadequate independence between the Commission and OAPP is that two OAPP employees, including the head of OAPP, serve as voting members of the HIV Commission. DHS staff stated that the head of OAPP has been a voting member of the Commission since the Commission was established in 1991. The current head of OAPP and the CARE Act Title II Fiscal Agent followed the past practice of nominating themselves as their representatives to the Commission. Another DHS employee, from outside OAPP, was nominated by the DHS Director of Public Health Programs and Services and is also a voting member of the Commission. The Board approved all of these nominations.

We contacted six other urban areas that have CARE Act HIV planning councils. Four of the areas (San Francisco, New York, Chicago and Miami) have local health department HIV/AIDS unit employees as voting members of the councils. The other two areas (Houston and Philadelphia) do not have health department HIV/AIDS unit employees on their councils. These two jurisdictions indicated they previously had the staff on the councils, but removed them because of concerns about the appearance of a conflict of interest.

We discussed the presence of local health department HIV/AIDS unit staff on the County HIV Commission with federal HRSA officials. They stated that, while HRSA does not have a formal policy, some HRSA officials believe that local health department HIV/AIDS unit staff (e.g., DHS OAPP staff) should not be voting members of the Commission.

As noted earlier, the Commission's responsibilities include certifying that CARE act funds have been spent in accordance with Commission priorities, and reviewing the mechanism used by the County to administer CARE Act funds. Because these functions include evaluating the work of OAPP, there is an appearance of a lack of independence by having OAPP managers on the Commission. We recommend that OAPP employees serve as non-voting members of the Commission, or that DHS appoint non-OAPP staff to the Commission.

The co-chairs of the County HIV Commission stated that the OAPP staff who serve on the Commission provide vital input, focus and professionalism to the Commission. We agree that OAPP staff should continue to participate in the Commission. However, we believe they can continue to provide input to the Commission either as non-voting members, or in an advisory capacity.

Recommendation 1

The County amend the County Code to have OAPP employees serve as non-voting members of the Commission, or to require DHS to appoint non-OAPP staff to the Commission.

Non-County Commission Members' Affiliations

DHS indicated that approximately one-half of the 49 members of the County HIV Commission are affiliated with organizations that provide HIV/AIDS services under contract to the County.

The federal CARE Act requires that representatives from healthcare and social service providers be on the local HIV planning councils. The federal HRSA officials we contacted stated that they believe provider representatives should be on the councils. In addition, we noted that all six of the other jurisdictions we contacted have provider agency representatives on their HIV councils. However, three of the jurisdictions require provider representatives to abstain from voting on some issues that could

directly affect their agencies. For example, a representative from an inpatient service provider cannot vote on the funding allocation for inpatient services.

The inclusion of so many service providers who are also recipients of CARE Act funding on the County HIV Commission also creates the appearance of a conflict. As such, we recommend that the DHS work with County Counsel, the CAO and other appropriate parties to evaluate whether the Commission membership can be modified to reduce this appearance of conflict.

Recommendation 2

DHS work with County Counsel, CAO and other appropriate parties to evaluate whether the Commission membership can be changed to reduce the appearance of conflict.

Commission Support Staff

As discussed earlier, the County HIV Commission is responsible for developing an overall County plan for HIV/AIDS health services and establishing priorities for expending CARE Act funds. The Commission does not make recommendations for specific funding recipients or review individual contracts for HIV/AIDS health services. Rather the Commission sets funding priorities by establishing percentages of funds to be used for specific service categories (e.g., inpatient services, dental care, etc.).

To establish funding priorities, the Commission reviews information on service utilization rates, unmet needs, available funding, trends in HIV/AIDS medical care and disease transmission and other factors. Based on the funding priorities set by the Commission, OAPP works to obtain contractors to provide services to clients.

Developing information needed to set funding priorities is a key task to allow the Commission to meet its mandate. To ensure that this information is developed independent of the contracting process, staff independent of OAPP should perform the work. Currently, the County HIV Commission does not have its own staff. OAPP staff provides the Commission's staff support.

HRSA staff indicated that to ensure the planning process is independent of the contracting process, the HIV planning councils should have their own staff independent of local health department HIV/AIDS unit.

In addition, as noted earlier, two of the Commission's mandated responsibilities are certifying that the contracts awarded by OAPP comply with the Commission's priorities and evaluating the administrative mechanism used in the contracting process. Both of these functions require the Commission to evaluate the work of OAPP. To ensure this evaluation is done independently, the Commission should have its own staff separate from OAPP.

In June 2001, the County Core Planning Partners established a Staffing Pattern Task Force to develop a staffing model for the Commission. In February 2002, the Task Force recommended that the Commission have staff support independent of OAPP.

To ensure that the Commission can perform its planning and evaluation functions independent of the contracting process, DHS should work with the CAO and the Department of Human Resources to provide the HIV Commission with staff independent of OAPP.

Recommendation 3

DHS work with the CAO and the Department of Human Resources to provide the HIV Commission with staff independent of OAPP.